Supreme Court, U.S.
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97-1898

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1997

DAVID L. WILLIAMS,
Petitioner

V.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the Commonwealth of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

I. Were Petitioner's Constitutional rights against Double Jeopardy and for Due Process of law under the Fifth and Fourteenth Amendments to the United States Constitution violated due to the imposition of a criminal and a civil penalty in this case?

PARTIES TO THE PROCEEDING

The petition does not accurately list the parties to the proceeding.

The Office of District Attorney of York County is an agency of York County, Pennsylvania.

The Office of the Attorney General of the Commonwealth of Pennsylvania should also be included as a party to this proceeding pursuant to 28 U.S.C. § 2403(b). Petitioner has not stated, pursuant to Supreme Court Rule 29(4)(c), whether the Supreme Court of the Commonwealth of Pennsylvania, pursuant to 28 U.S.C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of this state was drawn into question by Petitioner.

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***United States ex rel. Marcus v. Hess*, 317 U.S. 537, 63 S.Ct. 379, 87 L.Ed. 443 (1943)**	3
***Wong Wing v. United States*, 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896)**	4

Federal Statutes Cited:

28 U.S.C. § 2403(b) ii

Federal Rules Cited:

Supreme Court Rule 29(4)(c) ii

State Statutes Cited:

75 Pa.C.S.A. § 1543 1-5

State Rules Cited:

Pa.R.Crim.P. 21 4

Pa.R.Crim.P. 86 4

STATEMENT OF THE CASE

The petition seeks this Court's review of the Pennsylvania Supreme Court's order (No. 759 Middle District Allocatur Dkt. 1997) denying Petitioner's request for allowance of appeal from a decision rendered by the Superior Court of Pennsylvania. (No. 481 Harrisburg 1996).

The petition challenges the constitutionality of 75 Pa.C.S.A. § 1543, claiming that it violates Petitioner's Double Jeopardy and Due Process rights through the imposition of what Petitioner claims are successive "criminal" penalties.

As detailed below, there is no cause for this Court's review of Petitioner's legal contention, which was rejected by both the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania.

A. The petition includes facts not found in the record of this case.

First, there is no record support for Petitioner's allegation that "The Petitioner, partially for financial reasons, attempted pro se to respond to the Notice of action of Suspension..." (Pet. 4) The reason Petitioner chose to act without counsel is not a part of the record and is not relevant to the resolution of the issue at hand.

Second, the petition states:

> "In most geographical areas of the United States, including most areas of York County, Pennsylvania where this offense occurred, the sole means of transportation is by automobile. To the great number of persons in these places, the inability to drive creates the inability to work, the inability to obtain the necessities of life such as food and medical assistance and the inability to exercise the constitutional rights of a citizen to participate in government and to vote and, of

> course, social isolation especially for those persons who live alone."

(Pet. 13) To the extent these allegations are factual or seek to establish an actual hardship suffered by Petitioner due to the revocation of his driving privileges, they are not supported by the record.

Third, the petition states: "Statistical data after the enactment and release of these suspended drivers to drive again in fact showed a decrease in accident fatalities per vehicle miles traveled. 1996 Pennsylvania Crash Facts and Statistics, Pennsylvania Department of Transportation, Bureau of Highway Safety and Traffic Engineering, Page 11." (Pet. 14) The above data was never made part of the record in this case. Furthermore, the petition misrepresents the import of the above data. While the data cites a decrease in accident fatalities per miles traveled, it covers all drivers, not simply those suspended drivers who had their privileges returned.

REASONS FOR DENYING THE WRIT

The Petitioner's claim that § 1543 of the Pennsylvania Motor Vehicle Code (75 Pa.C.S.A. § 1543) is repugnant to the United States Constitution does not warrant review by this Court. The decision below was a plainly correct application of settled law.

In ***Hudson v. United States*, ___ U.S. ___, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)**, this Court addressed the legal standard applicable to Double Jeopardy claims under the Fifth Amendment:

> The Double Jeopardy clause provides that no 'person [shall] be subject for the same offense to be twice put in jeopardy of life and limb'. This Court recognized that the Double Jeopardy clause does not prohibit the imposition of any additional

> sanction that could, "in common parlance", be described as punishment. ***United States ex rel. Marcus v. Hess*, 317 U.S. 537, 549 (1943)** (quoting ***Moore v. Illinois*, 14 How. 13, 19 (1852)**). The Clause protects only against the imposition of multiple criminal punishments for the same offense, ***Helvering v. Mitchell*, 303 U.S. 391, 399 (1938)**; see also ***Hess*, 317 U.S. at 548-549** ("Only" "criminal punishment" subject[s] the defendant to 'jeopardy' within the constitutional meaning); ***Breed v. Jones*, 421 U.S. 519, 528 (1975)**("In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution"), and then only when such occurs in successive proceedings, see ***Missouri v. Hunter*, 459 U.S. 359, 366 (1983)**."

Hudson v. United States*, *supra.

According to ***Hudson***, it must initially be determined whether the particular punishment is criminal or civil. Even in those cases when the legislature is deemed to have voiced an intention to establish a civil penalty, ***Hudson*** requires this Court to further inquire whether the statutory scheme is so punitive either in purpose or effect so as to transform what was clearly intended as a civil remedy into a criminal penalty. *See* ***United States v. Ward*, 448 U.S. 242, 248-249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)** and ***Rex Trailer Co. v. United States*, 350 U.S. 148, 154, 76 S.Ct. 673, 100 L.Ed. 149 (1956)**. Applying the above standard, the refusal of the court below to declare 75 Pa.C.S.A. § 1543 unconstitutional was a proper decision.

With the rationale in ***Hudson*** as a yardstick, the Pennsylvania Legislature has created a statute with both a criminal and a civil penalty. 75 Pa.C.S.A. § 1543(b) created a summary offense that carries a mandatory sentence of no less than 90 days in prison and a $1000 fine. Jurisdiction over the trial of summary offenses lies with district justices (Pa.R.Crim.P. 21), with de novo appeals heard in the county Courts of Common Pleas (Pa.R.Crim.P. 86). *See* ***Wong Wing v. United States*, 163 U.S.**

228, 235, 16 S.Ct. 977, 41 L.E. 140 (1896)(holding that quintessential criminal punishment may be imposed only "by a judicial trial"). There is no dispute as to the characterization of this section being criminal in nature.

75 Pa.C.S.A. § 1543(c) [**Suspension or revocation of operating privilege**], authorized the Pennsylvania Department to revoke an individual's driving privileges upon receipt of a certified record of the conviction of any person under § 1543. The gist of Petitioner's argument is that this section amounts to criminal punishment. The petition ignores the fact that the authority to revoke driving privileges was granted to an administrative agency which, according to both ***Hudson***, ***supra***, and ***Helvering***, ***supra***, is prima facie evidence that the legislature intended to provide for a civil sanction.

Even though the statute carries a civil intent, this Court must still apply the second prong of the test in ***United States v. Ward***, ***supra***, to determine whether the revocation of a driver's license is "so punitive in form and effect as to render it criminal despite the legislature's intent to the contrary". ***Hudson*** held only the "clearest proof" will suffice to override the legislative intent.

The second prong of the ***Ward*** test, reaffirmed in ***Hudson***, involves an analysis of the factors previously set forth in ***Kennedy v. Mendoza-Martinez***, **372 U.S. 144, 168-169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)**. They are:

> (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment- retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may be rationally be connected is assignable for it, and (7) whether it appears excessive in relation to the alternative purpose assigned.

Id. Furthermore, both ***Kennedy*** and ***Hudson*** held that an individual factor is not dispositive in rendering the punishment criminal.

Contrary to the argument in the petition, revocation of a driver's license does not involve an "affirmative disability or restraint." There is no difference between debarment and driver's license revocation in this respect. Debarment deprives a person of the privilege of practicing a certain licensed occupation. Driver's license revocation deprives a person of practicing another licensed activity, namely driving an automobile. In ***Hudson***, this Court found that debarment did not involve an "affirmative disability or restraint" and there is no reason to depart from that reasoning for the licensing of drivers.

Revocation of driving privileges has been historically regarded as a civil penalty. In Pennsylvania, a driver's license is a "privilege" granted by the Commonwealth. This Court has repeatedly held that "revocation of a privilege voluntarily granted...is characteristically free of the punitive element". ***Helvering v. Mitchell*, 303 U.S. 391, 399, 58 S.Ct. 630, 82 L.E. 917 (1938)**.

Despite the contention in the petition, scienter is not necessary to trigger the license revocation under the instant statute. While Pennsylvania courts have held that a conviction under 75 Pa.C.S.A. § 1543(b) requires scienter, in that the defendant must have been aware of the license suspension or revocation when found driving a vehicle, *see* ***Commonwealth v. Gamble*, 376 Pa.Super. 590, 546 A.2d 681 (1988)**, scienter provides no defense to 75 Pa.C.S.A. § 1543(c). A certified record of the conviction is the only proof necessary to trigger the license revocation that is automatic and mandatory. There is no regard for the violator's state of mind.

Certainly the revocation of one's driver's license would deter others from emulating Petitioner's conduct, but the revocation carries a civil purpose. The Pennsylvania Superior Court in ***Gamble*** noted that "the 12 month suspension by the Department of Transportation...was imposed to protect the public

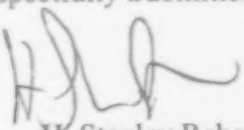
from a motorist who had recently been adjudicated guilty of a DUI [Driving Under the Influence] and who the Department of Transportation had recently determined was an unsafe driver". That same Court previously held in ***Commonwealth v. Wolfe*, 454 Pa.Super. 93, 684 A.2d 642 (1996)**, that "although suspensions may have an 'incidental deterrent or punitive effect', the primary purpose of such suspensions is not to punish the individual but to protect the public." ***Id.* at 96, 684 A.2d at 646**.

The conclusion of the lower courts that the license suspension was not criminal punishment is well within the parameters of the ***Hudson*** decision and, as such, does not call for this Court's review.

CONCLUSION

For these reasons, a Writ of Certiorari should be denied.

Respectfully Submitted,



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